IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant(s):	Kevin W. Spear	
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Examiner:	Charles R. Kyle	
Title:	HYBRID CREDIT CARD TRANSACTION SYSTEM	

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APPEAL BRIEF UNDER 37 CFR § 41.37

This Appeal Brief is filed pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" filed September 18, 2006 and in response to the Notification of Non-Compliant Appeal Brief mailed on December 22, 2006. It includes a revised Summary of the Claimed Subject Matter to more particularly describe the invention as claimed in Claims 1 and 14.

1. ***Real Party in Interest.***

The real party in interest in this appeal is United Parcel Service, Inc.

2. ***Related Appeals and Interferences.***

There are no related appeals and/or interferences involving this application or its subject matter.

3. ***Status of Claims.***

Claims 1-25 are pending, all of which stand rejected and are appealed. Claims 26-29 have been withdrawn in response to a restriction requirement.

4. ***Status of Amendments.***
There are no unentered amendments in this application.

5.   *Summary of Claimed Subject Matter.*

Independent Claim 1 recites a hybrid credit card transaction system 10 for processing a transaction. Pat. App. at Fig. 2. The transaction is initiated by a cardholder represented using a hybrid credit card represented by a combination of a private label line of credit 12 and standard credit card account 16. Id. The transaction is processed as either one of a group of virtual standard transactions routed through a clearinghouse (e.g., 16 to 17 to 18 to 14 to 19 and back to 16) or as one of a group of virtual closed loop transactions bypassing the clearinghouse (e.g., 16 to 17 to 18 to 19 and back to 16). Id. at Figs. 2 and 3. The term "virtual" refers to the aspect of the invention mimicking the prior art standard and closed loop transactions so as to be transparent to the buyer, while at the same time bypassing the clearinghouse 14 without limiting acquisition of the transactions to only the card issuer. Pat. App. at p. 6, ll. 8-10.

Claim 1 includes a hybrid credit card which is defined in Claim 1 by its use and interaction with a logic-enabled merchant 17, an affiliated acquiring entity 18 and an affiliated card issuing entity 18 that are also included in the system. Id. at Figs. 2 and 3. As noted above, the hybrid credit card can, for example, be represented by a combination of a private label line of credit 12 and standard credit card account 16. Id.

A logic-enabled merchant of Claim 1 has a point-of-sale terminal 17 including program logic operable to identify the hybrid credit card and to label the transaction using the hybrid credit card as being one of the virtual closed loop transactions. Id. at Figs. 2 and 3. The point-of-sale terminal, for example, can be a data capture and transmission device used to process payment card transactions. Id. at page 7, ll. 23-25. The logic of the point-of-sale terminal of Claim 1 is capable of identifying the hybrid credit card amongst standard credit cards and label the transaction accordingly. For example, the first string of the card identifier may be detected by the logic-enabled merchant. Id. at ll. 18-19. In another example, the MCC is changed if the transaction is executed using a hybrid credit card. Id. at page 9, ll. 8-13.

Claim 1 also includes an affiliated acquiring entity 18 configured to acquire and direct the virtual standard transactions (solid arrow line indicating an unlabeled transaction from 17) to the clearinghouse 14 and configured to acquire and direct the virtual closed loop transactions (dotted

arrow line indicating a labeled transaction from 17) so as to bypass the clearinghouse 14. Id. at Figs. 2 and 3.

An affiliated card issuing entity 19 of Claim 1 accepts the virtual standard transactions (solid arrow line) from the clearinghouse 14 and debits a credit card account 12 and accepts the appropriately labeled (dotted arrow line) virtual closed loop transactions directly from the affiliated acquiring entity 18 and debits a private label account 16. Id. In Claim 1, the acquiring entity and card issuing entities are separate entities but are affiliated through an agreement to skip the clearinghouse. The acquiring entity 18 and card issuing entity 19 are "affiliated" through a prior agreement to reduce fees, offer incentives or somehow cooperate to the advantage of the affiliates or the cardholders. Id. at p. 6, ll. 22-25. This is in contrast with standard "on-us" transactions where the acquiring bank and the sponsoring (card issuing) bank must be the same entity. Id. at p. 1, ll. 26-27.

Thus, the hybrid credit card of Claim 1 has at least two charge functions, including a virtual standard charge function that routes charges through a clearinghouse and a virtual closed-loop transaction function that skips the clearinghouse in a unique way when compared to conventional closed-loop transactions. Id. at p. 3, ll. 17-21. The multi-use function of the hybrid credit card may be enabled, for example, by a card identifier having a first string identifying the virtual closed loop transactions and a second string identifying virtual standard transactions that are recognizable by a logic-enabled merchant 17. Id.

Independent Claim 14 recites a method 10 of processing a transaction, initiated by a cardholder using a hybrid credit card 12, 16, as either one of a group of virtual standard transactions routed through a clearinghouse (e.g., 16 to 17 to 18 to 14 to 19 and back to 16) or as one of a group of virtual closed loop transactions bypassing the clearinghouse (e.g., 16 to 17 to 18 to 19 and back to 16). Id. at Figs. 2 and 3. The method of Claim 14 includes identifying the hybrid credit card using program logic at a point-of-sale of a logic enabled merchant (e.g., Id. at page 7, ll. 14-18) and labeling the transaction using the hybrid credit card as being one of the virtual closed loop transactions (e.g., Id. at page 9, ll. 8-13.).

The method of Claim 14 also includes acquiring and directing the virtual standard transactions to the clearinghouse (solid arrow line indicating an unlabeled transaction from 17)

and acquiring and directing the virtual closed loop transactions (dotted arrow line indicating a labeled transaction from 17) so as to bypass the clearinghouse 14 using an affiliated acquiring entity 18. Id. at Figs. 2 and 3.

The method of Claim 14 further includes accepting the virtual standard transactions (solid arrow line) from the clearinghouse 14 and debiting a credit card account 12 and accepting the virtual closed loop transactions (dotted arrow line) and debiting a private label account 16 using an affiliated card issuing entity 18. Id.

In Claim 14, the acquiring entity and card issuing entities are separate entities but are affiliated through an agreement to skip the clearinghouse. The acquiring entity 18 and card issuing entity 19 are "affiliated" through a prior agreement to reduce fees, offer incentives or somehow cooperate to the advantage of the affiliates or the cardholders. Id. at p. 6, ll. 22-25. This is in contrast with standard "on-us" transactions where the acquiring bank and the sponsoring (card issuing) bank must be the same entity. Id. at p. 1, ll. 26-27.

It should be noted for Claims 1 and 14 that the labeling of the transaction as a virtual closed-loop transaction for detection by the acquiring entity uncouples the acquiring entity from the issuing entity, allowing use of multiple closed-loop credit card brands from different issuers without the logic-enabled merchant needing a customized routing system or process for each of the closed-loop credit brands. Unlike conventional closed-loop credit card transactions, the logic-enabled merchant of the claimed invention can send the closed-loop credit card transactions to the same acquiring entity that also processes standard transactions with the assurance that the acquiring entity will recognize each labeled transaction and direct it accordingly to the appropriate card issuer without using a clearinghouse. Thus, each different closed-loop credit brand does not require a specialized, dedicated routing system or process implemented by the merchant at the point of sale to ensure each transaction of closed-loop brand is directly sent to particular issuer. The VISA system has the ability to process differently-branded cards from different issuers, but the cost of this flexibility is required use of the clearinghouse and the associated fees of the clearinghouse.

6.   *Grounds of Rejection to be Reviewed on Appeal.*

Currently pending Claims 1-5, 8, 9, 12, 14-17, 20-21 and 24 were rejected under 35 U.S.C. §103(a) over the background of the present application and U.S. Patent No. 5,590,038 to Pitroda ("Pitroda") and EMTM 553: E-commerce Systems ("EMTM"). Claims 6, 7, 18 and 19 were rejected under 35 U.S.C. §103(a) over the background, Pitroda, EMTM and U.S. Patent App. Pub. 2002/0174030 to Praisner et al. ("Praisner"). Claims 10 and 22 were rejected under 35 U.S.C. §103(a) over the background, Pitroda and a Barron's Dictionary of Business Terms ("Dictionary"). Claims 11 and 23 were rejected under 35 U.S.C. §103(a) over the background, Pitroda, EMTM and an American Express webpage. Claims 13 and 25 were rejected under 35 U.S.C. §103(a) over the background, Pitroda, EMTM and U.S. Pat. No. 6,065,675 to Teicher ("Teicher").

7. **Argument.**

As explained below, Applicants respectfully submit that Claims 1-25 are patentably distinct from the background, EMTM, Pitroda, Praisner, Dictionary, American Express webpage and Teicher, taken individually or in combination. Accoridngly, Applicants resepctfully request that the aformentioned rejections be reversed.

Background Section

In the background section of the present application, two separate credit card transaction systems are described in the alternative. Standard transactions are described in which the acquiring entity must use the clearinghouse when sending the transaction to the issuing entity. Also, alternatively described are "on-us" transactions where the acquiring entity and issuing entities must be the same to be able to recognize the card and thus skip the clearinghouse.

In contrast, the present invention as recited by Claim 1 has separate acquiring and issuing entities. But, because the point-of-sale terminal labels the closed loop transactions, the acquiring entity knows to bypass the clearinghouse and send the transaction directly through to the issuing entity. Therefore, the acquiring entity and the card issuing entity need not be the same entity. Claims 1 and 14 were previously amended for clarity to recite "wherein the acquiring entity and

the card issuing entities are separate entities." In addition, Claims 1 and 14 were previously amended to recite that the entities are "affiliated by an agreement to bypass the clearinghouse."

Notably, although the claimed invention *mimics* the *appearance* of a standard transaction for a purchaser using a credit card, it does in fact have very different structure and function than conventional systems. It is therefore important to focus on the underlying function and structure of the invention instead of merely citing the apparent similar mimicked function from the perspective of the purchaser as evidence of obviousness or a motivation to combine. Instead, the ability of the claimed invention to mimic standard transactions is a surprising result of a divergence from the typically separate, alternative and independent operation of standard credit cards or closed-loop lines of credit. Thus, Applicant's attorney believes that the mention of these two separate systems together in the present application is being inappropriately used as a motivation to combine the two systems.

Pitroda

Pitroda discloses a universal electronic transaction (UET) card that allows the user to select from a number of credit card accounts before proffering the card to the point-of-sale. The following steps are listed by Pitroda at column 6, lines 19-36:

> (1) selecting from a UET card a service institution account from a group of service institution accounts; (2) establishing an electronic communication between the universal electronic transaction card, a point of transaction system and a service institution system; (3) transmitting from the universal electronic transactions card to the point of transaction system the account information for the selected service institution account; (4) transmitting from the point transaction system to the service institution system transactional information for the credit transaction and the service institution account; (5) in the service institution system, screening the service account and transactional information to determine whether the account is valid and whether the credit transaction is within predetermined credit limits for that account; and (6) for valid accounts and credit

transactions within predetermined limits, transmitting an authorization for the

credit transaction to the point of transaction system.

Although disclosing a card that can be used on different credit accounts, in Pitroda it is the user

that selects the credit line being accessed prior to proffering the card to the point-of-sale

terminal.

Other than having a more sophisticated mode of electronically obtaining the credit card

account number, the point-of-sale of Pitroda goes through the normal clearing and transmission

steps of a standard credit card transaction. The point-of-sale terminal of Pitroda has no logic

enabled to detect and label a closed loop transaction so that a separate, but affiliated, acquiring

entity and issuing entity can bypass a clearinghouse.

EMTM

The EMTM reference includes slides of a presentation describing Open and Closed Loop

Systems. The slide on page 37 of EMTM cited in the Office Action as being most relevant

includes the following:

Open and Closed Loop Systems
- Closed loop systems
  - Banks and other financial institutions serve as brokers between card users and merchants – no other institution is involved
  - American Express and Discover are examples
- Open loop systems
  - Transaction is processed by third party
  - Visa and MasterCard are examples.

Although a detailed argument was not submitted in the Office Action, the Examiner

appears to be interpreting the plurality of the "banks and other financial institutions" as

disclosing or suggesting that multiple of these institutions participate cooperatively in a single

closed loop transaction. However, this slide is merely disclosing that many banks and financial

institutions participate in closed loop systems. In other words, each is participating in its own system, which are collectively systems.

The phrase "no other institution is involved" is referring to the fact that, by definition, a closed loop transaction flows <u>only through a single financial institution from the merchant to the card user</u>. This is precisely what was already disclosed in the background section of the present application. There is no disclosure or suggestion that an affiliated acquiring entity – separate from the issuing entity – acquires the transaction, detects labeling indicating that it is a closed-loop transaction and then routes the transaction directly to the affiliated card issuing entity, bypassing the clearinghouse. The EMTM reference, therefore, does not overcome the failure of the remaining references to teach or suggest the present invention.

Teicher

Teicher discloses a heterogeneous stored-value system that offers interoperability among a number of proprietary payment card brands with differing fee structures. Each brand of charge function has its own loading terms and settlement terms. A single payment card may have more than one charge function and may therefore be associated with more than one brand.

In one embodiment, Teicher discloses that the card bears both a charge function and an electronic cash purse. The card is first loaded with electronic cash at a loading device using a charge payment of a particular brand. Column 11, lines 11-15 of Teicher. When the card is used at an "enhanced POS," a system manager decides whether to charge the cash purse or the charge function depending upon the amount of the transaction. Column 11, lines 44-56 of Teicher. Alternatively, the cardholder can decide whether to use the cash purse or the charge function. The brand of the charge function or electronic cash is detected by its association with an ID number and is directed to the settlement systems associated with the brand.

Tiecher discloses a single payment card that has more than one brand of charge function where each charge function is associated with an ID number. However, detection of the ID number and routing of the transaction occurs <u>at the point-of-sale</u> and not at the acquirer. Once the transaction leaves the point-of-sale, it enters a conventional settlement system and is treated as such. "The system makes use of existing settlement practices and fee structures…" Abstract

of Teicher.

Teicher also discloses that acquirers sign merchants on contracts specifying the terms and fees for a charge brand and issuers sign customers on their charge function usage terms and fees. Column 16, lines 50-67 of Teicher. However, Applicant's attorney could find nothing in Teicher disclosing an agreement between an acquiring entity and card issuing entity to bypass a clearinghouse when receiving a labeled, closed loop transaction. Teicher also does not suggest such an agreement, since Teicher discloses making use of existing settlement practices and fee structure.

Praisner

Praisner discloses that a typical purchasing card has nine "slots" or MCC groups for unique configuration. Praisner discloses that preferred merchants may be applied to these slots. Praisner, however, discloses nothing about a logic-enabled merchant that is configured to detect and label closed loop transactions. Praisner also discloses nothing about separate acquiring and card issuing entities that have agreed to bypass a clearinghouse for the closed loop transactions.

American Express Webpage

With respect to the American Express webpage, this document has a date of January 11, 2006 and does not appear to be prior art. The present application was filed on March 20, 2001.

Dictionary

The dictionary definition of "revolving credit" discloses nothing about labeling or
· clearance of a closed loop line of credit.

Summary

As shown above, the cited references, including the background section, Pitroda, EMTM, Teicher, Praisner, American Express Webpage and Dictionary, alone and in combination fail to teach or suggest Claims 1 and 14. The remaining Claims 2-13 and 15-25 depend from, and

further patentably distinguish, Claims 1 and 14. The rejections of Claims 1-25 under 35 U.S.C.
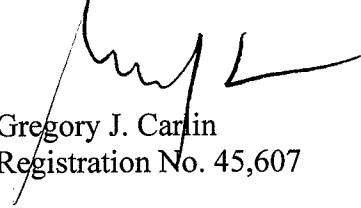
103(a) should therefore be reversed.

CONCLUSION

For at least the foregoing reasons, Applicants respectfully request that the rejections be reversed.

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Claims Appendix

1.   (Previously Presented) A hybrid credit card transaction system for processing a transaction, initiated by a cardholder using a hybrid credit card, as either one of a group of virtual standard transactions routed through a clearinghouse or as one of a group of virtual closed loop transactions bypassing the clearinghouse, said transaction system comprising:

a hybrid credit card;

a logic-enabled merchant having a point-of-sale terminal including program logic operable to identify the hybrid credit card and to label the transaction using the hybrid credit card as being one of the virtual closed loop transactions;

an affiliated acquiring entity configured to acquire and direct the virtual standard transactions to the clearinghouse and configured to acquire and direct the virtual closed loop transactions so as to bypass the clearinghouse; and

an affiliated card issuing entity accepting the virtual standard transactions from the clearinghouse and debiting a credit card account and accepting the virtual closed loop transactions and debiting a private label account;

wherein the acquiring entity and card issuing entities are separate entities affiliated by an agreement to bypass the clearinghouse.

2.   (Original) The hybrid credit card transaction system of claim 1, further comprising a processing element having an incentive fee structure that returns an incentive to the cardholder for conducting virtual closed loop transactions with the hybrid credit card.

3.   (Original) The hybrid credit card transaction system of claim 2, wherein said incentive is in proportion to a fee avoided when bypassing the clearinghouse.

4.   (Original) The hybrid credit card transaction system of claim 1, further comprising a processing element having an incentive fee structure that returns an incentive to the merchant for conducting virtual closed loop transactions with the hybrid credit card.

5.   (Original) The hybrid credit card transaction system of claim 2, wherein said incentive is in proportion to a fee avoided when bypassing the clearinghouse.

6.   (Original) The hybrid credit card transaction system of claim 1, wherein said hybrid credit card includes a card identifier having a first string identifying the virtual closed loop transactions and a second string identifying the virtual standard transactions, said card identifier detectable by the program logic of the logic-enabled merchant.

7.   (Original) The hybrid credit card transactions system of claim 6, wherein said first string includes a merchant category code modified to identify the virtual closed loop transactions.

8.   (Original) The hybrid credit card transaction system of claim 1, wherein the logic-enabled merchant is one of a group of affiliated merchants participating in sales on an internet site.

9.   (Original) The hybrid credit card transaction system of claim 8, wherein the cardholders are small businesses and the internet site is a marketplace for business-to-business transactions.

10.   (Original) The hybrid credit card transaction system of claim 1, wherein the credit card account includes a revolving credit line.

11.   (Original) The hybrid credit card transaction system of claim 1, wherein the private label line of credit is an unsecured credit line that must be periodically paid in full.

12.   (Original) The hybrid credit card transaction system of claim 1, wherein the affiliated card issuing entity issues separate periodic statements of transaction activity on the private label line of credit and the credit account to the cardholder.

13.   (Previously Presented) The hybrid credit card transaction system of claim 1, wherein the affiliate agreement is further agreed upon by the logic enabled merchant, said affiliate agreement further defining a fee structure for crediting and debiting fees resulting from the virtual closed loop transaction amongst the logic enabled merchant, the affiliated acquiring entity and the affiliated card issuing entity.

14.   (Previously Presented) A method of processing a transaction, initiated by a cardholder using a hybrid credit card, as either one of a group of virtual standard transactions routed through a clearinghouse or as one of a group of virtual closed loop transactions bypassing the clearinghouse, said method of processing a transaction comprising:

identifying the hybrid credit card using program logic at a point-of-sale of a logic enabled merchant and labeling the transaction using the hybrid credit card as being one of the virtual closed loop transactions;

acquiring and directing the virtual standard transactions to the clearinghouse and acquiring and directing the virtual closed loop transactions so as to bypass the clearinghouse using an affiliated acquiring entity; and

accepting the virtual standard transactions from the clearinghouse and debiting a credit card account and accepting the virtual closed loop transactions and debiting a private label account using an affiliated card issuing entity;

wherein the affiliated acquiring entity and affiliated card issuing entities are separate entities affiliated by an agreement to bypass the clearinghouse.

15.   (Original) The method of processing a transaction of claim 14, further comprising the step of issuing the hybrid credit card to the cardholder before use in the transaction.

16.   (Original) The method of processing a transaction of claim 14, further comprising the step of returning an incentive to the cardholder for conducting virtual closed loop transactions with the hybrid credit card.

17.   (Original) The method of processing a transaction of claim 14, further comprising the step of returning an incentive to the merchant for conducting virtual closed loop transactions with the hybrid credit card.

18.   (Original) The method of processing a transaction of claim 14, wherein said identifying the hybrid credit card step includes identifying, using the program logic, a card identifier having a first string indicating the virtual closed loop transactions and a second string indicating the virtual standard transactions using the program logic.

19.   (Original) The method of processing a transaction of claim 18, wherein said identifying the hybrid credit card step includes identifying the first string having a merchant category code modified to indicate the virtual closed loop transactions.

20.   (Original) The method of processing a transaction of claim 14, further comprising the step of enrolling the logic-enabled merchants into a group of affiliated merchants participating in sales on an internet site.

21.   (Original) The method of processing a transaction of claim 20, wherein the step of enrolling includes enrolling cardholders that are small businesses to participate in business-to-business transactions with the affiliated merchants.

22.   (Original) The method of processing a transaction of claim 14, wherein in the step of accepting the virtual standard transactions includes debiting a revolving credit line.

23.   (Original) The method of processing a transaction of claim 14, wherein the step of accepting the virtual closed loop transactions includes debiting an unsecured credit line that must be periodically paid in full.

24.   (Original) The method of processing a transaction of claim 14, further comprising the step of issuing separate periodic statements of transaction activity on the private label line of credit to the cardholder.

25.   (Original) The method of processing a transaction of claim 14, further comprising the step of defining a fee structure for crediting and debiting fees resulting from the virtual closed loop transaction and agreed upon by the logic enabled merchant, the affiliated acquiring entity and the affiliated card issuing entity.

26.   (Withdrawn) A product rollout method usable by an affiliated card issuing entity for promoting transactions between small businesses and affiliated and non-affiliated merchants, said product rollout method comprising:

    providing an internet site for sales by the affiliated merchants to the small businesses;

    registering the small businesses for transactions on the internet site;

    offering a private label account and a credit card account to each of the small business registered on the internet site;

    issuing a hybrid credit card usable to initiate transactions debiting both the private label account and the credit card account to the registered small businesses;

    clearing transactions with non-affiliated merchants to the credit card account for a fee; and

    clearing transactions with affiliated merchants on the internet site to the private label line of credit for a second fee that is lower than the first fee such that transactions on the internet site and adoption of the hybrid credit card are promoted.

27.　(Withdrawn)　The product rollout method of claim 26, wherein said clearing transactions with affiliated merchants step includes identifying the hybrid credit card using an identification number associated with the hybrid credit card.

28.　(Withdrawn)　The product rollout method of claim 26, wherein said clearing transactions with non-affiliated merchants includes clearing transactions through a clearinghouse.

29.　(Withdrawn)　The product rollout method of claim 28, wherein said clearing transactions with affiliated merchants includes bypassing the clearinghouse and avoiding clearinghouse fees.

Evidence Appendix

No additional evidence is provided.

Related Proceedings Appendix

There are no related proceedings.